IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable/Not Reportable

Case No: JR 685/06

In the matter between:

A LEGODI AND OTHERS **Applicant**

and

SSSBC AND OTHERS **Respondent**

Heard: 23 July 2016

***Ex-tempore* judgment: 23 July 2016**

Date Edited :28 March 2018

***EX TEMPORE* JUDGMENT**

VAN NIEKERK J:

[1] This application has its origins and events that occurred in 2001 when

allegations of misconduct in the form of theft were made against the applicants. The dispute that followed the dismissal for that reason was ultimately referred to arbitration before the second respondent, the arbitration award is dated 5 January 2005.

[2] The present application for review was filed only on 17 May 2006. The application is therefore more than 15 months late. That is by any account an inordinate delay, having regard to the six-week time limit that is established by section 145 of the Labour Relations Act 66 of 1995.

[3] On 17 May 2006 the applicant filed an application for condonation. In that application he sets out what appears to be an explanation for the late filing of the application. The explanation is limited to correspondence with various parties prior to the filing of the application. These included various officials and the members of the executive. Quite why the applicant engaged in this course of correspondence rather than file an application for review is not explained.

[4] In regard to the prospects of success, the applicant simply states that he believes that he has good course, it seems, on the basis that when the matter came before a criminal court, the applicant was acquitted. This court is required to have regard to a number of factors. These include the degree of lateness, the explanation for the delay, the applicant's prospects of success and the prejudice to the parties.

[5] As I have already indicated, the delay in this matter is inordinate. The explanation, in my view, is unsatisfactory. It is not a full and proper explanation for the whole period of the delay. In any event, it does not explain the applicant's failure to invoke the provisions of section 145 or quite why that decision was made only after an unsuccessful campaign of correspondence that endured for some 15 months.

[6] In regard to the prospects of success, the applicant has not dealt in his affidavit in any detail with his prospects of success. He avers only that he was acquitted in a criminal court, presumably, of the offence that formed the basis for his dismissal. It is not for this court to troll through the record

to determine whether the applicant has prospects of success. These must be properly articulated in any application for condonation.

[7] In regard to the respective prejudice to the parties; it has been submitted on behalf of the applicant that he should be entitled to his day in court. Well, the fundamental purpose of the Labour Relations Act is the expeditious resolution of labour disputes. That finds reflection in section 145 which imposes a six-week time limit on the filing of review applications. It defines reflection in the rules in the Practise Manual. Indeed, the Practise Manual goes so far as to suggest that an applicant in a review application is required to pursue the application with the same degree of diligence as is required in urgent applications.

[8] In my view, the respondent's interest in finality far outweigh any interest the applicant might have in having the review application determined. I must take into account, as I have indicated, that the facts that gave rise to this dispute occurred in 2001. The award was granted in 2005. The review filed in 2006. There is simply no explanation for the applicant's failure to prosecute this application with the degree of diligence required.

[9] The applicant in effect seeks to come to this court, some ten years after filing an application for review and seeks an indulgence by way of a hearing of the application.

[10] The Constitutional Court and the Supreme Court of Appeal have more than once reproached this court for what are being called systemic delays in the resolution or determination of labour disputes. This court is not always to blame. This matter is a prime example of an applicant who has litigated at his leisure and after a decade seeks this court's indulgence by way of the granting of an application for condonation. In my view, there is no basis for condonation to be granted and the application for condonation is accordingly refused.

[11] In regard to costs, this is a matter which ordinarily ought to be the subject of a cost order and perhaps a cost order on a punitive scale. However, I

do note that as far back as 2006 the respondent has filed an application in terms of Rule 11 to dismiss the application for review. They have never prosecuted that application and are as equally culpable with the applicant in regard to the dilatory handling of this litigation. For that reason, I intend to make no order as to costs.

I make the following order:

1. Condonation for the late filing of the review application is refused.
2. The review application is dismissed.

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André Van Niekerk

Judge of the Labour Court